



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FEB 29 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr Vincent Cotter, Superintendent
230 Flourtown Rd.
Plymouth Meeting, PA 19426

Re: Colonial School District
Notice of Noncompliance and Request to Show Cause
Case Number: A-08-035

Dear Dr. Cotter:

Please be advised that on the basis of an on-site school inspection, interviews and a review of pertinent documents, the United States Environmental Protection Agency, Region III ("EPA" or "the Agency") has determined that the Colonial School District has failed to comply with certain requirements of the Toxic Substances Control Act ("TSCA" or "the Act"), 15 U.S.C. §§ 2601 to 2692, the Asbestos Hazard and Emergency Response Act ("AHERA") and its implementing regulations promulgated at 40 C.F.R. Part 763, Subpart E. The Agency is sending this to your attention because you are considered to be the Local Education Agency ("LEA") for the Plymouth Whitmarsh High School, located at 109 East Germantown Pike in Plymouth Meeting, PA, Colonial Middle School, located at 716 Belvoir Road, in Norristown, PA, and the Colonial Elementary School, located at 230 Flourtown Road in Plymouth Meeting, PA, as defined in 40 C.F.R. § 763.83. A LEA is defined as including "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools." As a result of these findings, the Agency is issuing you this Notice of Noncompliance ("NON") and Request to Show Cause why EPA's information is not correct and why additional enforcement action is not appropriate for these violations. A description of the relevant facts and a list of the specific violations identified by EPA are outlined immediately below.

I. RELEVANT FACTS

Set forth below is a recitation of the facts relevant to EPA's determination that the Colonial School District was in violation of TSCA requirements governing asbestos-containing materials ("ACM") in schools at the time of the EPA inspection conducted on April 10, 2007.

On April 10, 2007, an authorized representative of the EPA conducted inspections at the Plymouth Whitmarsh High School, Colonial Middle School, and Colonial Elementary School



School ("the Three Schools") pursuant to TSCA. During the inspection, the EPA inspector interviewed the school's principal or assistant principal and reviewed relevant files and discovered that the Colonial School District had failed to:

- a) maintain in the school's administrative office a complete, updated copy of the management plan for the school;
- b) update its asbestos management plan;
- c) conduct the required six (6) month surveillance activities;
- d) provide at least 2 hours of asbestos awareness training to all members of its maintenance and custodial staff;
- e) provide the required training to the designated person; and
- f) provide information to short-term workers regarding the location of asbestos containing building material ("ACBM");

II. TSCA/AHERA VIOLATIONS

EPA has determined that violations of the following TSCA/AHERA regulatory requirements occurred within the Three Schools. Based upon the information currently available, EPA also has determined that the issuance of an Administrative Complaint is the appropriate enforcement response to address these violations of the Act.

A. Failure to Make Management Plan Available

Section 40 CFR 763.93(g)(1)-(3) require that LEAs shall:

Maintain complete and updated copies of management plans in LEA and school administrative offices, and make them available for inspection.

At the time of the TSCA/AHERA inspection conducted by EPA on April 10, 2007, the management plan was not available at the Colonial Elementary School. As a result, and based on currently available information, EPA concludes that the Colonial School District failed to comply with the management plan requirement of 40 C.F.R. § 763.84(f).

B. Failure to Update Management Plan

Section 40 C.F.R. § 763.93(d) require that:

Each local education agency shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan under this section shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date.

As a result of the inspections conducted on April 10, 2007 EPA found that the Colonial School District had not been updating its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities for each of the Three Schools. Based on currently available information, EPA concludes that the Colonial School District failed to comply with the asbestos management plan updating requirements of 40 C.F.R. § 763.93(d).

C. Failure to Conduct Periodic Surveillance

Section 40 C.F.R. § 763.92(b)(1) requires that:

At least once every 6 months after a management plan is in effect, each local education agency shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM.

During the inspection conducted on April 10, 2007, EPA found that Colonial School District had not been conducting periodic surveillance every six (6) months after the management plan went into effect at each of the Three Schools. Based on currently available information, EPA concludes that the Colonial School District failed to comply with the periodic surveillance requirements of 40 C.F.R. § 763.92(b)(1).

D. Failure to Provide Maintenance and Custodial Staff with Asbestos Awareness Training

Section 40 C.F.R. § 763.92(a)(1) requires that:

The local education agency shall ensure...that all members of its maintenance and custodial staff...who may work in a building that contains ACBM receive awareness training of at least 2 hours.

During the April 10, 2007 inspections, EPA found that Colonial School District's maintenance and custodial staff at each of the Three Schools had not received at least 2 hours of asbestos awareness training. Based on currently available information, EPA concludes that Colonial School District failed to comply with training requirements of 40 C.F.R. § 763.92(a)(1).

E. Failure to Train Designated Person

Section 40 C.F.R. § 763.84(g) (2) requires each LEA to:

Ensure that the designated person receives adequate training to perform duties assigned under [40 C.F.R. § 763.84]

During the April 10, 2007 inspections, EPA found that Colonial School District's designated person for each of the Three Schools had not received the required training. Based on currently available information, EPA concludes that Colonial School District failed to comply with designated person training requirements of 40 C.F.R. § 763.84(g)(2).

F. Failure to Provide Information to Short-term Workers

Section 40 C.F.R. § 763.84(d) requires each LEA to:

Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come into contact with asbestos in a school are provided information regarding the locations of ACBM and suspected ACBM assumed to be ACM.

During the April 10, 2007 inspections, EPA found that the Colonial School District had not been providing short-term workers with information regarding the locations of ACBM and suspected ACBM assumed to be ACM at each of the Three Schools. Based on currently available information, EPA concludes that Colonial School District failed to comply with provision of information requirements of 40 C.F.R. § 763.84(d).

III. REQUEST FOR INFORMATION AND CERTIFICATION, TO SHOW CAUSE & OPPORTUNITY TO CONFER

To facilitate settlement discussions and to supplement EPA's understanding of the compliance activities, if any, taken at the school subsequent to the above-referenced inspection, EPA requests that you submit such additional documentation which may be in your possession or control that identifies any and all measures taken to address the violations identified herein. If the compliance measures identified are planned or are on-going, please provide a schedule for when the compliance measures will be completed. Such information must be submitted, within thirty (30) days of receipt of this NON to Richard Ponak (3WC32), Asbestos Enforcement Officer, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

when the compliance measures will be completed. Such information must be submitted, within thirty (30) days of receipt of this NON to Richard Ponak (3WC32), Asbestos Enforcement Officer, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

If you have additional information relevant to this matter which you believe EPA should consider prior to filing a formal Administrative Complaint, EPA similarly requests that you provide such information, and show cause why an Administrative Complaint should not be issued, within twenty-one (21) calendar days of receipt of this NON. In addition, EPA invites you to meet with EPA within forty-five (45) calendar days of receipt of this letter to discuss the potential administrative resolution to these violation(s). If you do not respond within twenty-one (21) calendar days of receipt of this letter or we have not reached a satisfactory administrative resolution of these violations within ninety (90) calendar days of receipt of this letter, the Agency will determine an appropriate enforcement response without further prior notice to you.

EPA is enclosing for your information and review a copy of the addressed AHERA regulations, the EPA's January 31, 1989 Interim Final Enforcement Response Policy for AHERA (revised on August 4, 1998) and a copy of 40 C.F.R. Part 19 (entitled "Adjustment to Civil Monetary Penalties for Inflation"). In determining the amount of any penalty to propose in an enforcement action for violations of the Act, TSCA Section 207(a) and (c), 15 U.S.C. § 2647(a) and (c), require EPA to take into consideration a violator's culpability, history of previous TSCA violations, ability to pay the penalty, and ability to continue to provide educational services to the community, in addition to such other matters as justice requires (including voluntary disclosure and attitude of the violator).

Please note that TSCA § 207(a), 15 U.S.C. § 2647(a), additionally provides that the court shall order that any civil penalty collected under [subsection II of AHERA] be used by the LEA for purposes of complying with AHERA. Any portion of the civil penalty remaining unspent after compliance by an LEA is completed shall be deposited into the Asbestos Trust Fund established by Section 4022 of Title 20.

In keeping with this provision, EPA's revised Enforcement Response Policy directs that civil penalties which are assessed against LEAs such as the Colonial School District shall be reduced on a dollar for dollar basis by the cost of compliance with AHERA. As a result, EPA specifically offers you the opportunity to propose one or more TSCA/AHERA compliance projects that the Colonial School District may be willing to undertake at the school building such that all or a portion of the civil penalties which EPA may propose for the violations documented herein may be used to bring the Colonial School District back into full compliance with TSCA/AHERA requirements rather than collected by the Agency as a penalty to be deposited into the Federal Treasury.

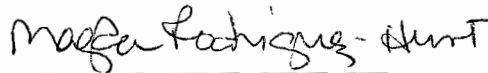
For your further information and support, EPA is also enclosing an Information Sheet entitled "U.S. EPA Small Business Resources", (EPA-300-F-03-001, May 2003), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with Federal and State environmental laws.

Please send any and all information, and direct any request for a settlement conference, to the attention of:

Richard Ponak
Enforcement Officer
U.S. Environmental Protection Agency - Region III
Waste and Chemicals Management Division (3WC32)
1650 Arch Street
Philadelphia, PA 19103-2029

Furthermore, to schedule a settlement conference or if you have any questions concerning this matter, please contact Richard Ponak at (215)814-2044.

Sincerely,



Fatima El Abdaoui, Chief
Pesticides/Asbestos Programs
& Enforcement Branch

Enclosures

cc: Randy Koppenhaver, PA DEP
Richard Ponak